On 1 August 2014 the Recoverable Benefits and Assistance Scheme ("the Scheme") came into effect. The central provisions are contained in sections 13 and 14 of the Social Welfare and Pensions Act 2013 which commenced on 1 August 2014.

Introduction

The essence of the Scheme is to require defendants (in most cases this will be insurers) to reimburse the Department of Social Protection ("the Department") for certain illness related benefits ("benefits") received by plaintiffs in personal injuries cases. The Scheme is retrospective in effect which means the Department can recover any benefits paid before the 1 August 2014.

This differs with prior arrangements which allowed an insurer to deduct the value of certain recoverable benefits received by a plaintiff from a loss of earnings claim, without having to reimburse the Department. In our view the introduction of the Scheme will have a significant impact on insurers writing business in the Irish market as existing reserves and future reserves may have to be increased.

What benefits are covered

Unsurprisingly the Scheme provides that almost all illness related benefits must be reimbursed to the Department and the Scheme covers any of the following benefits paid to plaintiffs:

- Injury Benefit
- Illness Benefit
- Partial Capacity Benefit

Key facts:

- Defendants must reimburse the Department of Social Protection for certain illness related benefits received by plaintiffs in personal injuries cases
- Department of Social Protection is entitled to seek re-imbursement of illness related benefits paid to plaintiffs over the last 5 years.
- Delays anticipated to litigation

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How the Scheme Works

An insurer is obliged to establish the amount of such payments the plaintiff received before making a compensation payment to the plaintiff. The insurer must then pay that amount to the Department. The recovery of payments will apply to awards made by the Courts and to agreements reached outside the Courts process. The following is a short summary of how the Scheme operates in practice:

- An insurer must apply for a statement from the Department to ascertain the value of the benefits received by the plaintiff for the last 5 years.

- Under the Scheme the Department has 4 weeks to provide the statement to the insurer/defendant. A copy of the statement is also provided to the plaintiff.

- The statement is valid for a period of 90 days only.

- The insurer must then reimburse the Department for the benefits paid to the plaintiff, together with a completed form RBA20 and await a certificate from the Department to be issued before releasing payment to the plaintiff.

- Where an insurer is dissatisfied with the assessment by the Department, they may appeal that decision. However, no appeal can be made until the amount specified in the statement has been paid.

Apportionment

The Scheme provides that in the case of a compensation payment from a court order or Injuries Board Assessment, the obligation to payback the benefits is limited to the total amount of damages assessed in relation to loss of earnings or profits. In other words there is no allowance for a situation whereby a loss of earnings claim is not accepted in a settlement or where there is an apportionment of liability of the plaintiff’s loss of earnings. Insurers
should tread very carefully here and in order to prevent a claim by the Department for the entire of the benefits paid to the plaintiff if a loss of earnings claim is not accepted or where there is apportionment of liability, insurers would be well advised to ensure that any settlement terms are confined to writing executed by all parties. Furthermore in our view insurers should obtain a court order regarding the settlement terms. In cases where a matter has not been assigned a trial date, this will require a court application to obtain a court order regarding the settlement terms. When insurers are completing the RBA20 and making a payment to the Department, the court order should be referred to.

**Multiple Defendants and Apportionment**

A common feature in many personal injuries cases is that there are multiple defendants involved in the litigation, a major drawback under the Scheme is that there is no provision for apportionment of liability when there are multiple defendants. The Scheme provides that where there is more than one paying defendant, each is liable to pay the full amount of the figure provided in the statement from the Department. Insurers would be well advised to confine to writing any apportionment of liability for special damages/loss of earnings claims between co-defendants to avoid any future dispute with the Department in relation to responsibility for payment of the benefits. Where there are multiple defendants contributing to any settlement or award, the form (RBA20) should clearly indicate how liability has been apportioned between the defendants.

**Conclusion:**

The above sets out the operation of the new Scheme and various issues pertaining to same. In our view the Scheme will no doubt lead to delays for insurers in settling cases as we anticipate the Department will encounter difficulties providing the statement within the stated period of 28 day. This will make it difficult for insurers to resolve cases in a timely manner without this information. In addition to that insurers should now be aware that reserves going forward will need take into account the fact that benefits paid to plaintiffs in personal injury cases will have to be reimbursed to the Department by the paying party. In addition to that insurers should as a matter of priority review all existing reserves to ensure that account has been taken of the benefits that may have to be reimbursed to the Department.
Finally under no circumstances should payments be made to plaintiffs until such time as the certificate is received from the Department confirming that the funds received by them is sufficient to discharge insurers liability under the Scheme.

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